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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	88728723
Applicant	Walrus Rodeo LLC
Applied for mark	GOLDN PAYDIRT
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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Walrus Rodel LLC

Serial No: 88728723

EX PARTE APPEAL

Plaintiff, through its counsel of record, requests, files this reply brief in support of registration of the trademark Gold'n Paydirt.

While the filing of a reply brief is optional by the Plaintiff. Plaintiff feels that the best way to correct and respond to the Examiner's erroneous statements it to file a reply brief. Plaintiff hopes that this will convince the Board that the mark GOLD'N PAYDIRT is suggestive and not descriptive.

ERRONEOUS STATEMENTS MADE BY THE EXAMINER.

Plaintiff asks the Board to not consider the following assumptions by the Examiner. There is no actual evidence of such and in fact these statements are incorrect.

1. Examiner states "Applicant's paydirt is golden in color and also contains gold, and Applicant's services include mining, mineral, and geological services to obtain the golden paydirt."

Response: 1) Applicant's paydirt is not paydirt. It is dirt. Paydirt is a suggestive term. **Dirt does not pay.** Paydirt is the hope or suggestion involved in the Applicant's novelty item. 2) Applicant's product, it is NOT gold in color. This is a ridiculous statement. This would imply that it is pure gold. Any belief that Applicant's product is golden in color is suggestive lighting by the product designer and not the products' actual color. Applicant's product *might* contain

gold, but the gold or other precious metal would be invisible to the naked eye. Never has the Board held that possible invisible products are anything more than suggestive. For example, the Trademark office always allows the Mark O2 for products even though the product *may* contain the chemical element O2. Simply put no one buying the Applicant's product believes they are getting pure gold, or a bag of gold. *In re John H. Breck, Inc.*, 150 USPQ 397, 398 (TTAB 1966) (The name must immediately convey the nature of the product).

Applicant believes that since the product is not gold in color, Examiner must "follow a multi-stage reasoning process in order to determine the characteristics the term identifies, [therefore] the [Mark] is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978). See also *In re Shutts*, 217 USPQ at 364-365; *In re Universal Water Systems, Inc.*, 209 USPQ 165, 166 (TTAB 1980).

2. Examiner uses the definition of GOLDEN as a noun.

RESPONSE: GOLDEN or GOLD'N is used as an adjective by the Applicant. Examiner's use of the GOLDEN noun definition is misplaced and without merit. When used as an adjective Macmillan's dictionary states that GOLDEN is suggestive of gold or something that is bright yellow in color. Again, by definition the term is suggestive. Golden can also mean supremely favored or fortunate, marked by peace and prosperity, and very favorable or advantageous. See Macmillan Dictionary.

3. Examiner states that pay dirt means "earth or ore that yields a profit to a miner."

RESPONSE: First, Applicant's Mark is one word. In other words, like Gold'n; Applicant has invented a word. Second, Applicant's target group is not miners. Miners work in a mine.

Applicant's customers and consumers are novelty item owners. Simply put, Examiner is applying terminology of yesterday to novelty items.

4. Examiner quotes the website that "The GOLDN PAYDIRT we offer is mined, created and comes to you directly from hard working GOLD MINERS!!"

RESPONSE: Unfortunately, Examiner fails to see the humor in this statement. Like the Applicant selling pure gold for \$35 per pound, Applicant requests that the Examiner not take these statements literally with regard to these novelty items. If the Examiner takes everything literal, there exists a miner dressed in 1849 garb with his dokey that gathers the dirt from a mine in a secret location in the Arizona desert. Not only is this image suggestive, but highly imaginative. The hope is that the Examiner would not take these literally.

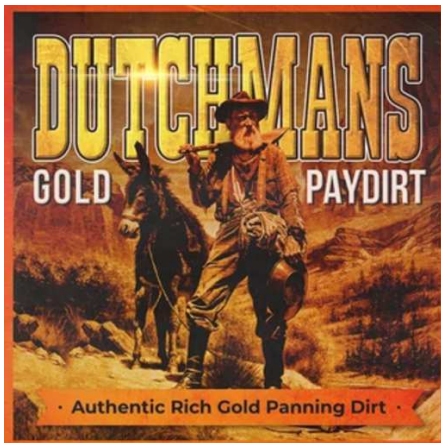


Figure 1. One of Gold'n Paydirt's products. Consumers know that the man and the scenario in the picture is not the how the product was made. This image is suggestive. Applicant asks that the Board recognizes that. This man in the Applicant's product is suggestive, just like the Mark.

5. Examiner states "when consumers encounter paydirt in the marketplace, it is commonly golden in color and contains gold."

RESPONSE: Applicant finds this statement incredulous. In order to be golden in color, it must be gold. Again, \$35 for a pound of gold is not what anyone is selling. Examiner is confusing suggestive marketing with the actual product.

6. Examiner states “The evidence from Gold Rush Trading Post shows that they provide paydirt with gold in it. See January 27, 2021 Office action, TSDR pages 2 – 4.”

RESPONSE: This is incorrect. These are novelty items. There is no guarantee of gold. It is suggestive that there might be gold in there. It is the equivalent of playing a slot machine. Jackpot does not guarantee a slot machine makes every user a winner of a jackpot. Again, it is suggestive. Examiner makes this argument for dozens of other products. Applicant requests that the Board use this response for each and every one of those products.

CONCLUSION

Applicant’s products are novelty items that suggest a Gold’n Paydirt. The purpose of the Mark is to suggestive a winner with the consumer. Applicant’s other Marks are JACKPOT and EUREKA. All suggestive. Applicant asks that the Board reject the Examiner’s merely descriptive arguments and recognize that the Examiner cannot and does not have a finger on the pulse of this industry; and does not understand the product nor the consumers who buy Applicant’s products. Applicant requests the Board find the Mark GOLD’N PAYDIRT suggestive of Applicant’s novelty products.

Respectfully Submitted on this the 23rd day of January, 2022,

s/Nathan Brown